

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

In Re: Complaint and Petition for Relief)	
Of South Carolina Net, Inc. d/b/a Spirit)	
Communications v. BellSouth)	Docket No. 2016-79-C
Telecommunications, LLC d/b/a AT&T)	
Georgia, AT&T North Carolina, and AT&T)	
South Carolina)	

DIRECT TESTIMONY OF MICHAEL D. BALDWIN

ON BEHALF OF SOUTH CAROLINA NET, INC. d/b/a SPIRIT COMMUNICATIONS

APRIL 7, 2016

1 **DIRECT TESTIMONY OF MICHAEL D. BALDWIN**

2 **ON BEHALF OF SOUTH CAROLINA NET, INC. d/b/a SPIRIT COMMUNICATIONS**

3
4 **I. INTRODUCTION**

5
6 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

7 A. My name is Michael D. Baldwin. My business address is 1500 Hampton Street,
8 Columbia, South Carolina 29201.

9
10 **Q. ON WHOSE BEHALF ARE YOU PROVIDING YOUR TESTIMONY TODAY?**

11 A. South Carolina Net, Inc. d/b/a/ Spirit Communications (“Spirit”).
12

13 **Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?**

14 A. I am employed by SCTG, LLC, which is the parent company of Spirit. My position is the
15 Vice President of Business Development, Regulatory, Legal Affairs and Human
16 Resources for Spirit.

17
18 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

19 A. I received my Juris Doctorate from Vermont Law School, my Masters of Business
20 Administration from Rutgers University, and my Bachelors of Science degree in
21 Mechanical Engineering from Villanova University.
22
23

1 **Q. PLEASE OUTLINE YOUR WORK EXPERIENCE AT SPIRIT.**

2 A. As Spirit's in-house counsel, I currently manage all of the company's legal and
3 regulatory initiatives, litigation, and relationships with outside counsel, and I am a key
4 contributor in all of Spirit's corporate development initiatives. In addition, I am
5 responsible for all of the company's human resources, contract negotiations, contract
6 development, and contract management functions, as well as vendor management
7 activities.

8
9 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE STATE PUBLIC UTILITY**
10 **COMMISSIONS?**

11 A. Yes. I've testified before both the Vermont Public Service Board and the South Carolina
12 Public Service Commission.

13
14 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE SOUTH CAROLINA**
15 **COMMISSION?**

16 A. Yes. I have testified before the Commission in connection with the Application of South
17 Carolina Telecommunications Group Holdings, LLC, d/b/a Spirit Communications
18 (which is an affiliate of Spirit) for a Certificate of Public Convenience and Necessity to
19 Provide Local Exchange and Interexchange Telecommunications Services, and for
20 Flexible and Alternative Regulation previously filed with the Commission.

Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

A. The purpose of my direct testimony is to describe the dispute between the parties, Spirit's efforts to resolve the dispute prior to filing a complaint with the Commission, and the relief sought by Spirit.

Q. WHAT IS THE PARTIES' MAIN DISAGREEMENT?

A. The parties' main disagreement is whether the Interconnection and/or Resale Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996 by and among Spirit and BellSouth Telecommunications, LLC d/b/a AT&T Georgia, AT&T North Carolina, and AT&T South Carolina by AT&T Services, Inc. (collectively, "AT&T"), dated June 12, 2012 (the "ICA") permits Spirit to disconnect any 911/E911 (collectively "911") interconnection facilities or trunk groups that it has previously ordered under the ICA and to cease being charged by AT&T therefor.¹

Q. WHY IS IT IMPORTANT FOR THE COMMISSION TO DECIDE THIS CASE PROMPTLY?

A. In addition to the financial impact of this dispute on Spirit, as further described below, requiring Spirit to order and maintain 911 trunks from AT&T in order to access AT&T's 911 Selective Routers, as well as refusing to disconnect the 911 interconnection facilities and trunks when Spirit has chosen to obtain 911 services, including 911 interconnection facilities and trunks, from a third-party provider for accessing the 911 Selective Routers,

¹ The ICA between Spirit and AT&T is referenced as Exhibit MDB-1. Exhibit MDB-1 is not being produced as an attachment to this testimony because it was previously produced as an exhibit to the Complaint and Petition for Relief.

1 is anticompetitive and unnecessarily and unreasonably paternalistic. A ruling by the
2 Commission which finds that the ICA allows Spirit to access the AT&T 911 Selective
3 Routers through the 911 interconnection facilities and trunks of a third-party provider of
4 911 services other than AT&T would be consistent with the practice of all other carriers
5 in the industry with the exception of AT&T. Further, certain of the owners of SCTG,
6 LLC, which is the parent company of Spirit, have encountered similar issues with AT&T
7 regarding its refusal to disconnect 911 interconnection facilities and trunks when they
8 have chosen to use the 911 services of a third-party provider of 911 services.
9

10 **Q. WHAT IS THE FINANCIAL IMPACT OF THIS DISPUTE?**

11 A. From March 19, 2014 until March 9, 2016, AT&T has billed Spirit in the amount of
12 \$136,268.24 for 911 interconnection facilities and trunks for which Spirit has issued
13 disconnect orders, but which AT&T refuses to disconnect, as well as for 911 facilities
14 and trunks for which Spirit would have issued disconnect orders absent AT&T's refusal
15 to disconnect these facilities and trunks. In addition, AT&T continues to bill Spirit in the
16 amount of \$4,953.59 monthly for 911 interconnection facilities and trunks that AT&T
17 refuses to disconnect.
18

19 **II. BACKGROUND**
20

21 **Q. WHAT IS SPIRIT?**

22 A. Spirit is a corporation incorporated under the laws of the State of South Carolina. Spirit
23 is a local exchange carrier, as that term is defined by both federal and state law, a "new

1 entrant local exchange carrier” as that term is defined by state law, and a “telephone
2 utility” as that term is defined by state law. Spirit and its affiliates provide voice, data,
3 Internet, and fiber optic solutions, along with a full suite of Cloud services to commercial
4 businesses and government agencies across the Southeast United States. Spirit’s voice
5 services are offered as Voice over Internet Protocol (“VoIP”). Spirit and its affiliates
6 serve thousands of customers in over 150 service locations throughout South Carolina,
7 North Carolina and Georgia.

8
9 **Q. WHAT IS AT&T?**

10 A. To my knowledge, AT&T is a corporation formed under the laws of the State of Georgia.
11 AT&T is an incumbent local exchange carrier (“ILEC”), as that term is defined by both
12 federal and state law, and a “telephone utility” as that term is defined by state law.
13 AT&T is also the 911 Service Provider (the entity that transmits 911 calls from Selective
14 Routers to Public Safety Answering Points (“PSAPs”) and that provides PSAPs with the
15 automatic location information (“ALI”) and automatic number identification (“ANI”) of
16 911 callers) in the areas of South Carolina where AT&T is the ILEC.

17
18 **Q. WHAT IS SPIRIT’S RELATIONSHIP WITH AT&T?**

19 A. In general, Spirit contracts with AT&T in multiple capacities covering a wide spectrum
20 of matters in the telecommunications industry. With respect to this dispute, Spirit and
21 AT&T have contracted, through the ICA, to interconnect their networks at mutually
22 agreed-upon points of interconnection to provide telephone exchange services and
23 exchange access to residential and business end users over their respective telephone

1 exchange service facilities in the State of South Carolina. Spirit and AT&T are not
2 affiliates or related parties.

3
4 **Q. WHEN DID SPIRIT ENTER INTO THE MOST RECENT INTERCONNECTION**
5 **AGREEMENT WITH AT&T?**

6 A. Spirit executed the ICA on April 18, 2012, and AT&T executed the ICA on June 11,
7 2012. The ICA was approved by the Commission on July 18, 2012.

8
9 **Q. DOES THE ICA WITH AT&T INCLUDE PROVISIONS FOR ACCESS TO**
10 **AT&T'S 911 DATABASES AND INTERCONNECTION TO AT&T'S**
11 **SELECTIVE ROUTERS FOR CALL ROUTING TO PSAPS FOR 911 CALL**
12 **COMPLETION?**

13 A. Yes. Attachment 5 of the ICA sets forth AT&T's obligation pursuant to Section 251 of
14 the Telecommunications Act of 1996 (the Communications Act of 1934, as amended by
15 the Telecommunications Act of 1996) to provide Spirit with access to AT&T's 911 ALI
16 databases and to provide Spirit with interconnection to AT&T's 911 Selective Routers
17 and then call routing to the appropriate PSAP for purposes of 911 call completion
18 (collectively, the "911 Access Services").²

19
20

² See Exhibit MDB-1.

Q. IS AT&T OBLIGATED TO PROVIDE SPIRIT WITH ACCESS TO ITS 911 ALI DATABASES AND TO 911 INTERCONNECTION FACILITIES AND TRUNKS FOR INTERCONNECTION TO ITS SELECTIVE ROUTERS?

A. Yes. AT&T is the 911 Service Provider, where it operates as an ILEC in South Carolina, and as such must provide Spirit, and other Competitive Local Exchange Carriers (“CLECs”) with access to the Selective Routers that route 911 calls to the appropriate PSAPs, but also with transport over facilities from the Selective Router to the appropriate PSAPs. Also, as the 911 Service Provider, AT&T must provide Spirit, and other CLECs, with access to the 911 ALI databases where AT&T manages the 911 ALI database.

Section 1.1 of Attachment 5 of the ICA states that Attachment 5 sets forth the terms and conditions by which AT&T **will provide** Spirit with access to AT&T’s 911 databases and provide interconnection and call routing for purposes of 911 call completion to a PSAP.³

Sections 1.2 and 1.3 of Attachment 5 of the ICA provide that, where AT&T is the 911 network provider (or 911 Service Provider) to the entity delegated to respond to public emergency telephone calls (“911 Customer”), AT&T is obligated to offer 911 Access Services to interconnecting carriers that have been approved by the 911 Customer.⁴

Sections 3.2.1, 3.2.2, and 3.3.1 of Attachment 5 of the ICA set forth AT&T’s duties as the 911 Service Provider.⁵ Specifically, Sections 3.2.1 and 3.2.2 set forth the process by

³ See Exhibit MDB-1.

⁴ See Exhibit MDB-1.

⁵ See Exhibit MDB-1.

which AT&T will route 911 calls from the AT&T Selective Router to the appropriate PSAPs. Section 3.3.1 provides that AT&T **shall provide** and maintain sufficient dedicated 911 trunks from AT&T's Selective Routers to the PSAPs or the 911 Customer. Section 3.4 of Attachment 5 of the ICA states that, where AT&T manages the 911 database, AT&T **shall provide** Spirit with access to the 911 database for certain purposes specified in the ICA.⁶ Section 3.3.2 of Attachment 5 of the ICA states that AT&T **will provide** facilities to interconnect Spirit to AT&T's Selective Routers.⁷

Q. IS SPIRIT OBLIGATED TO PURCHASE FROM AT&T ACCESS TO AT&T'S 911 DATABASES AND TO AT&T'S SELECTIVE ROUTERS?

A. No. Spirit is not required by the ICA, or by state or federal law, to use the 911 databases managed by AT&T, nor is Spirit required to purchase from AT&T access to AT&T's Selective Routers. If Spirit chooses to order and purchase 911 interconnection facilities and trunks from AT&T in order to access the Selective Routers, the ICA sets forth terms with which Spirit must comply.

Q. HAS SPIRIT ORDERED 911 INTERCONNECTION FACILITIES AND TRUNKS TO ACCESS AT&T'S 911 SELECTIVE ROUTERS AND 911 DATABASE?

A. Yes. Since Spirit began offering local service, Spirit has ordered 911 trunks to access AT&T's 911 Selective Routers and 911 database pursuant to its interconnection arrangements with AT&T, including under the ICA.

⁶ See Exhibit MDB-1.

⁷ See Exhibit MDB-1.

1 **Q. DOES THE ICA WITH AT&T REQUIRE SPIRIT TO USE 911**
 2 **INTERCONNECTION FACILITIES AND TRUNKS PURCHASED FROM AT&T**
 3 **IN ORDER TO ACCESS AT&T’S 911 SELECTIVE ROUTERS?**

4 A. No. Several provisions of the ICA indicate that Spirit has the option, but not the
 5 obligation, to order 911 interconnection facilities and trunks from AT&T in order to
 6 access AT&T’s Selective Routers. Section 42.1 of the General Terms and Conditions of
 7 the ICA provides that “[t]his Agreement is the arrangement under which the Parties *may*
 8 purchase from each other Interconnection Services.” (Emphasis added).⁸ In addition,
 9 Section 4.1.2 of Attachment 2 of the ICA states that “[t]runk groups for ancillary
 10 services (e.g., OS/DA, BLVA, High Volume Call In and E911) and Meet Point or Third
 11 Party (as appropriate) Trunk Groups *can be established* between CLEC’s switch and the
 12 appropriate AT&T-22STATE Tandem Switch as further provided in this Section 4.0.”⁹
 13 (Emphasis added). Further, Section 1.2 of Attachment 5 of the ICA states that “[a]ccess
 14 to AT&T’s E911 Selective Routers and E911 Database Management System will be by
 15 mutual agreement between the Parties.”¹⁰

16
 17 Section 3.3.2 of Attachment 5 of the ICA states that Spirit has the option to secure 911
 18 interconnection facilities from another provider or provide such interconnection using its
 19 own facilities.¹¹ The requirements for ordering 911 trunks from AT&T found in Sections
 20 4.2.3, 4.2.4, 4.2.6, and 4.2.7 of Attachment 5 to the ICA are required only to the extent

⁸ See Exhibit MDB-1.

⁹ See Exhibit MDB-1.

¹⁰ See Exhibit MDB-1.

¹¹ See Exhibit MDB-1.

1 that Spirit chooses to order the 911 services that AT&T is required to offer for access to
2 its 911 Selective Routers.¹²

3
4 **Q. WHO IS BANDWIDTH.COM/DASH911?**

5 A. To my knowledge, Bandwidth.com, Inc. (formerly Dash911) (“Bandwidth”) is a CLEC
6 authorized in South Carolina and an alternative provider of 911 services. Bandwidth
7 operates under an interconnection agreement with AT&T, having opted into the
8 interconnection agreement between Covad and AT&T.

9
10 **Q. WHAT IS SPIRIT’S RELATIONSHIP WITH BANDWIDTH?**

11 A. Pursuant to a Master Service Agreement by and between Bandwidth and South Carolina
12 Telecommunications Group Holdings, LLC (which is an affiliate of Spirit), dated
13 September 27, 2013 (the “MSA”), including the 911-Terms and Conditions
14 supplementing the MSA, Bandwidth provides certain 911 services to Spirit. Spirit and
15 Bandwidth are not affiliates or related parties.

16
17 **Q. WHEN DID SPIRIT ENTER INTO AN AGREEMENT WITH BANDWIDTH?**

18 A. Spirit entered into the MSA with Bandwidth on September 27, 2013.

19
20 **Q. WHAT SERVICES DOES BANDWIDTH PROVIDE TO SPIRIT?**

21 A. Bandwidth provides 911 call routing to the appropriate 911 Service Provider and
22 Selective Router, using its own ALI database to determine caller location and then to

¹² See Exhibit MDB-1.

1 route and carry 911 calls to the appropriate Selective Router of the 911 Service
2 Provider. The Bandwidth 911 services also provide a number of additional benefits to
3 Spirit and to Spirit's customers.
4

5 Bandwidth provides nationwide coverage for its 911 services, eliminating Spirit's need to
6 establish 911 interconnection facilities and trunks with many different 911 Service
7 Providers across the three states where Spirit operates. Bandwidth provides dynamic
8 address validation using multiple sources. Specifically, Bandwidth evaluates customer
9 addresses provided by Spirit against the MSAG, Intrado's ALI, and Bandwidth's own
10 ALI to validate the customer addresses and ensure accuracy. To ensure proper 911 call
11 routing, Bandwidth provides a single platform for immediate subscriber registration of
12 addresses for new locations when customers move their VoIP phones. Bandwidth
13 provides the capability for bulk uploads of customer addresses into the Bandwidth ALI
14 database versus single address entry required for AT&T's ALI database. Bandwidth's
15 API provisioning is a dynamic Internet connection provided to Spirit that enables bulk
16 uploads of Spirit customer addresses. Bandwidth provides an end user portal branded for
17 Spirit. Bandwidth provides a 24x7 Network Operations Center ("NOC") that will answer
18 911 calls if a 911 call is not received by the PSAP, often due to limited PSAP ports. The
19 Bandwidth NOC will route these 911 calls to the appropriate law enforcement or
20 emergency service, or re-send them to the PSAP when a port has opened. Bandwidth
21 serves Spirit as a partner in providing advanced 911 services to Spirit's customers.
22

1 **Q. ARE THERE OTHER ENTITIES THAT PROVIDE TRANSPORT TO THE**
2 **AT&T 911 SELECTIVE ROUTERS SIMILAR TO THOSE SERVICES**
3 **PROVIDED BY BANDWIDTH?**

4 A. Yes, Intrado, now West Corporation, is a third-party provider of 911 services similar to
5 those offered by Bandwidth.
6

7 **Q. WHEN DID SPIRIT BEGIN TRANSPORTING 911 TRAFFIC TO AT&T'S 911**
8 **SELECTIVE ROUTERS OVER BANDWIDTH'S 911 INTERCONNECTION**
9 **FACILITIES AND TRUNKS WITH AT&T, AND BEGIN USING BANDWIDTH'S**
10 **911 DATABASES?**

11 A. Spirit began transporting 911 traffic to AT&T's 911 Selective Routers over Bandwidth's
12 911 interconnection facilities and trunks and began using Bandwidth's 911 ALI databases
13 in October of 2013.
14

15 **Q. WHEN DID SPIRIT ISSUE DISCONNECT ORDERS FOR THE 911**
16 **INTERCONNECTION FACILITIES AND TRUNKS ORDERED FROM AT&T**
17 **UNDER THE ICA?**

18 A. Spirit began issuing disconnect orders for the 911 interconnection facilities and trunks
19 ordered from AT&T under the ICA in the fourth quarter of 2013.
20

21 **Q. DID AT&T DISCONNECT THE 911 INTERCONNECTION FACILITIES AND**
22 **TRUNKS AS REQUESTED?**

23 A. No.

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Q. HAS AT&T CONTINUED TO BILL SPIRIT FOR THE 911 INTERCONNECTION FACILITIES AND TRUNKS THAT SPIRIT HAD REQUESTED BE DISCONNECTED BY AT&T?

A. Yes.

III. AT&T’S BREACH OF THE ICA BY REFUSING TO DISCONNECT 911 INTERCONNECTION FACILITIES AND TRUNKS AND CEASE BILLING FOR ALL 911 SERVICES UPON REQUEST BY SPIRIT

Q. HAS AT&T BREACHED THE ICA BY REFUSING TO DISCONNECT 911 INTERCONNECTION FACILITIES AND TRUNKS AS REQUESTED BY SPIRIT AND BY CONTINUING TO BILL FOR THE 911 INTERCONNECTION FACILITIES AND TRUNKS?

A. Yes.

Q. HOW DID SPIRIT ATTEMPT TO RESOLVE THIS DISPUTE?

A. On February 12, 2014, on behalf of Spirit, I sent a letter to Chris Rozycki, Manager, Telecom Programs, South Carolina Office of Regulatory Staff, in which I sought assistance from the South Carolina Office of Regulatory Staff (“ORS”) to order AT&T to honor Spirit’s disconnect orders; to order AT&T to discontinue billing of the 911 trunk groups that are no longer used for 911 service; and to order AT&T to reimburse Spirit for

1 any invoices paid on the 33 911 trunk groups since January 1, 2014.¹³ AT&T responded
2 by letter of April 24, 2014, focusing almost exclusively on the provisions in Attachment 5
3 of the ICA that are applicable if Spirit *chooses* to purchase 911 Access Services from
4 AT&T. Further, in its April 2014 letter, AT&T stated that “it is AT&T’s position that
5 from a contract, safety, and network reliability perspective, Spirit has an obligation to
6 maintain dedicated trunks from its switch to AT&T’s selective router.”¹⁴
7

8 On November 6, 2014, Spirit and AT&T participated in an ORS-conducted mediation but
9 were unable to resolve the issues related to the 911 trunk groups. Following up on that
10 mediation and the parties’ agreement there to pursue formal arbitration of the dispute, I
11 requested formal arbitration pursuant to Section 13.7 of the ICA General Terms and
12 Conditions in a letter to AT&T on February 4, 2015.¹⁵ AT&T responded to my February
13 4 letter disputing that the parties had agreed to formal arbitration, and citing Section
14 13.6.2.1 of the ICA General Terms and Conditions, specifically that disputes “will be
15 subject to elective arbitration pursuant to Section 13.7 below if, and only if ... both
16 Parties agree to arbitration.” AT&T claimed that the representatives at the mediation
17 were not authorized to, and did not, agree to elective arbitration pursuant to Section 13.7.
18 AT&T maintained the only arbitration discussed at the mediation was the mandatory
19 arbitration of a successor interconnection agreement, but also noted that any such
20 arbitration proceeding with regard to 911 call routing matters would involve a “number

¹³ See Exhibit MDB-2.

¹⁴ See Exhibit MDB-3.

¹⁵ See Exhibit MDB-4.

of technical, public safety, policy, and legal issues that would need to be addressed.”¹⁶

Again, AT&T continued to operate in an anti-competitive, paternalistic role.

**Q. AFTER SPIRIT ATTEMPTED TO RESOLVE THE DISPUTE, DID AT&T
AGREE TO CEASE BILLING FOR THE 911 INTERCONNECTION
FACILITIES AND TRUNKS THAT SPIRIT HAD REQUESTED BE
DISCONNECTED?**

A. No.

**Q. DID SPIRIT REQUEST THAT THE PARTIES ARBITRATE THE DISPUTE
PURSUANT TO THE TERMS IN THE ICA?**

A. Yes. By letter from me to AT&T, Contract Management, Notices Manager, dated
February 4, 2015, Spirit requested that the parties arbitrate the dispute pursuant to the
ICA.¹⁷

Q. DID AT&T AGREE TO ARBITRATE THE DISPUTE?

A. No. By letter dated March 27, 2015, AT&T refused to submit the dispute to elective
arbitration under the provisions of the ICA.¹⁸

¹⁶ See Exhibit MDB-5.

¹⁷ See Exhibit MDB-4.

¹⁸ See Exhibit MDB-5.

1 **Q. DID SPIRIT SEEK TO RESOLVE THE DISPUTE ONE FINAL TIME BEFORE**
2 **PURSUING ALL REMEDIES PROVIDED FOR UNDER THE ICA, INCLUDING**
3 **FILING THIS COMPLAINT?**

4 A. Yes. By letter from Donald L. Herman, Jr. of Herman & Whiteaker, LLC, counsel to
5 Spirit, to AT&T, dated July 15, 2015, Spirit made one further attempt to resolve the 911
6 trunk group dispute on a business level before pursuing other available remedies,
7 including agency involvement.¹⁹

8
9 **Q. WHAT WAS AT&T'S RESPONSE TO THAT REQUEST?**

10 A. In a July 30, 2015 letter responding to Spirit, AT&T maintained the positions stated in its
11 April 2014 and March 2015 letters and acknowledged that the state commission is the
12 most appropriate entity to address this dispute.²⁰

13
14 **Q. HOW MUCH HAS AT&T BILLED SPIRIT FOR THE 911 INTERCONNECTION**
15 **FACILITIES AND TRUNKS THAT SPIRIT REQUESTED BE**
16 **DISCONNECTED?**

17 A. From March 19, 2014 until March 9, 2016, AT&T has billed Spirit in the amount of
18 \$136,268.24 for the 911 interconnection facilities and trunks that Spirit has requested be
19 disconnected. In addition, AT&T continues to bill Spirit monthly in the amount of
20 \$4,953.59 for these 911 interconnection facilities and trunks.

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¹⁹ *See Exhibit MDB-6.*

²⁰ *See Exhibit MDB-7.*

IV. CONCLUSION

Q. HOW SHOULD THE COMMISSION RULE IN THIS PROCEEDING?

A. The Commission should rule in favor of Spirit in this proceeding and grant Spirit the relief requested by it.

Q. WHAT RELIEF IS SPIRIT SEEKING FROM THE COMMISSION FOR AT&T'S BREACH OF THE ICA?

A. Spirit requests that the Commission:

(i) Find that the ICA allows Spirit to access the AT&T E911 Selective Routers through the 911 interconnection facilities and trunks of a third-party provider of 911 services other than AT&T;

(ii) Find that the ICA permits Spirit to disconnect during the term of the ICA any 911 trunk groups and 911 interconnection facilities it has previously ordered under the ICA;

(iii) Find that AT&T may not continue to charge Spirit for 911 interconnection facilities and trunk groups that Spirit has requested be disconnected;

(iv) Find that AT&T has breached the ICA by refusing to disconnect 911 interconnection facilities and 911 trunk groups that Spirit requested be disconnected and by continuing to charge Spirit for the 911 interconnection facilities and 911 trunk groups that Spirit requested be disconnected;

(v) Find that AT&T must reverse all charges for 911 interconnection facilities and 911 trunk groups back to the first date on which Spirit requested disconnection of

1 such facilities and trunk groups, including any 911 interconnection facilities and 911
2 trunks groups for which Spirit did not request disconnection due to AT&T's continuing
3 refusal to disconnect those facilities and trunks already requested; and

4 (vi) Grant all such other relief as the Commission deems necessary and
5 appropriate.

6
7 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

8 A. Yes.

CERTIFICATE OF SERVICE

The undersigned, Carrie L. DeVier, hereby certifies that she is employed by the law firm of Herman & Whiteaker, LLC as attorneys for South Carolina Net, Inc. d/b/a Spirit Communications (“Spirit”) and that she has caused the Direct Testimony of Michael D. Baldwin in Docket No. 2016-79-C to be served by United States Postal Service, first class postage prepaid and affixed thereto, and addressed to the following on April 7, 2016:

Thomas M. Payne
Executive Director, Senior Legal Counsel
BellSouth Telecommunications, LLC d/b/a AT&T Georgia,
AT&T North Carolina, and AT&T South Carolina
675 West Peachtree St., NW, Suite 4523
Atlanta, Georgia 30308

Jeffrey M. Nelson, Esquire
Chief Counsel
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, South Carolina 29201

Jocelyn G. Boyd, Esquire
Chief Clerk
South Carolina Public Service Commission
101 Executive Center Drive
Suite 100
Columbia, South Carolina 29210

Michael Baldwin
Vice President, Business & Legal Affairs
Spirit Communications
1500 Hampton Street
Columbia 29201

Amir L. DeWeir

Carrie L. DeVier

EXHIBIT MDB-1

(Incorporated by reference from the ICA filed as an exhibit to the Complaint and Petition for Relief)

EXHIBIT MDB-2



February 12th, 2014

Mr. Chris Rozycki
Manager, Telecom Programs
South Carolina Office of Regulatory Staff (ORS)
1401 Main Street, Suite 900
Columbia, SC 29201

Via e-mail at crozyck@regstaff.sc.gov

Subject: AT&T 911 Trunking Issue

Dear Chris,

I am writing to you to bring to the ORS' attention a 911 trunking issue that we're disputing with AT&T. The issue I'm presenting to the ORS is whether 911 trunks are required under Spirit's Interconnection Agreement with AT&T (Exhibit A attached), even when a CLEC employs the services of an alternative 911 service provider, and neither AT&T nor the CLEC intend to continue to pass traffic on the existing trunks subsequent to activation of the alternative 911 service provider.

Spirit currently maintains approximately 33 T1 trunk groups (and multiple trunks) between itself and AT&T. The 33 trunk groups originate within Spirit's IP switch in South Carolina, and terminate at various AT&T Routers located in Charleston, SC; Florence SC; Charlotte, NC; Augusta, GA; Asheville, NC; Columbia, SC; Easley, SC; Savannah, GA; Union, SC; and Wilmington, NC. Spirit recently executed a contract with an alternative 911 IP service provider known as Dash911 ("Dash"), and Dash maintains its own separate 911 trunks between its network and AT&T. Once Spirit established trunk groups between its network and Dash's network, continuation of 911 emergency services was guaranteed, and Spirit began issuing disconnect orders on the 911 trunk groups between its network and AT&T. AT&T declared a violation of the Interconnection Agreement and has refused to disconnect the 33 trunking facilities. AT&T has also failed to cite the specific sections of the Interconnection Agreement requiring that 911 trunk groups remain in place even when neither party intends that they be used.

In support of Spirit's argument, Section 4.1.2 of Attachment 2 of the Interconnection Agreement states that:

" Trunk groups for ancillary services (e.g., OS/DA, BLVI, High Volume Call In and E911) and Meet Point or Third Party (as appropriate) Trunk Groups *can* be established between CLEC's switch and the appropriate AT&T-22STATE Tandem Switch as further provided in this Section 4.0."

Section 4.1.2 expressly states that Trunk Groups *can* be established, not that these Trunk Groups must be established as a condition of the Agreement. While Spirit was using AT&T 911 Services, Spirit did establish trunk groups between itself and AT&T in accordance with Section 4.1.2. Now that Spirit no longer desires AT&T's 911 services, it desires to terminate these trunk groups.

Section 5.5.3 of Attachment 2 of the Interconnection Agreement states that:

"Transport facilities for 911, Mass Calling, OS/DA, Third Party and Meet Point Trunk Groups are the responsibility of OE-LEC from OE-LEC to the serving Tandem or platform that provides

each such service type."

Similarly, Section 5.5.3 also uses permissive language and expressly states that Transport facilities for 911 are the responsibility of Spirit and not simply a condition of executing the Agreement. While Spirit was using AT&T 911 Services, Spirit did incur the responsibility in accordance with Section 5.5.3. Now that Spirit no longer desires AT&T's 911 services, it desires to terminate its responsibility, including further payments, for these inactive trunk groups.

Section 1.2 of Attachment 5 of the Interconnection Agreement states that:

"Access to AT&T-22STATE's E911 Selective Routers and E911 Database Management System will be by mutual agreement between the Parties."

Again, Section 1.2 uses permissive language and expressly states that access to the 911 routers is by *mutual agreement of the Parties*, and not simply an obligatory condition resulting from simple execution of the Interconnection Agreement. While Spirit was using AT&T 911 Services, Spirit did agree to AT&T's terms and conditions consistent with Section 1.2. Now that Spirit no longer desires AT&T's 911 services, it desires to terminate its responsibility, including future payments, for these inactive trunk groups.

The second sentence of Section 3.3.2 of Attachment 5 of the Interconnection Agreement states that:

"Additionally, CLEC has the option to secure interconnection facilities from another provider or provide such interconnection using their own facilities."

Consistent with the general theme of the Interconnection Agreement, Section 3.3.2 expressly alludes to the possibility of a CLEC using alternative 911 facilities and/or facility providers. Given this possibility, Spirit finds it curious that AT&T would advocate the use of alternative suppliers, yet continue to bind a CLEC to payment of abandoned facilities.

Since December of 2013, Spirit has repeatedly attempted to disconnect these 33 911 trunk group facilities, but AT&T will not honor Spirit's disconnect orders. AT&T's most recent action in ignoring Spirit's disconnect orders and continued billing of abandoned facilities has made it necessary for Spirit to appeal to the ORS for outside assistance. Spirit seeks ORS assistance to order AT&T to honor Spirit's disconnect orders, order AT&T to discontinue billing of the abandoned 33 trunk groups, and order AT&T to reimburse Spirit for any invoices paid on the 33 trunk groups beginning January 1st, 2014. Spirit looks forward to any assistance your office can provide, and if you'd like to discuss this issue in further detail, please don't hesitate to contact me at your earliest convenience.

Sincerely,

/Michael D. Baldwin/

Michael D. Baldwin

Senior Counsel, Business & Legal Affairs
Spirit Communications
1500 Hampton Street
Columbia, SC 29201
803-726-4053
mike.baldwin@spiritcom.com

EXHIBIT A

Spirit - AT&T Interconnect Agreement (e-mailed as a separate attachment)

EXHIBIT MDB-3



Robert Culpepper
General Attorney - TN

AT&T Tennessee
333 Commerce Street
Suite 2101
Nashville, TN 37201-1800

T: 615.214.6300
F: 615-214-7406
rc1191@att.com

April 24, 2014

Michael D. Baldwin, Esquire
Senior Counsel, Business & Legal Affairs
Spirit Communications
1500 Hampton Street
Columbia, SC 29201
mike.baldwin@spiritcom.com

Re: 911 Trunking Obligations and Dispute Resolution

Dear Mike:

This is in response to our conversation regarding Spirit Communications' 911 trunking obligations and your correspondence, dated February 12, 2014, to Chris Rozycki of the South Carolina Office of Regulatory ("ORS") Staff regarding the same. In your correspondence, you framed the issue as "...whether 911 trunks are required under Spirit's Interconnection Agreement with AT&T ... even when a CLEC employs the services of an alternative 911 service provider, and neither AT&T nor the CLEC intend to continue to pass traffic on the existing trunks subsequent to activation of the alternative 911 service provider." As explained below, the short answer is that Spirit has a contractual obligation to maintain the 911 trunks it has attempted to disconnect.

As an initial matter, Spirit's reference to contract provisions outside of Attachment 05-911-E911 of the parties' interconnection agreement ("ICA") (hereinafter "911 Attachment") are not on point, and fail to address its obligation to maintain 911 trunks with AT&T. Instead, the relevant contract provisions between AT&T and Spirit addressing the 911 obligations between the parties; and more specifically, Spirit's obligation to maintain 911 trunks with AT&T are addressed in the 911 Attachment. Three provisions of the 911 Attachment address the issue at hand, and provide:

4.2.3.

CLEC shall order a minimum of two (2) one-way outgoing E911 Trunk(s) dedicated for originating 911 Emergency Service calls for each default PSAP or default ESN to interconnect to each appropriate AT&T- 22STATE E911 SR, where applicable. Where Signaling System 7 (SS7) connectivity is available and required by the applicable E911 Customer, the Parties agree to implement Common Channel Signaling (CCS) trunking rather than Multi-Frequency (MF) trunking.

4.2.4.

CLEC is responsible for ordering a separate E911 Trunk group from AT&T- 22STATE for each county, default PSAP or other geographic area that the CLEC serves if the E911 Customer for such county or geographic area has a

specified varying default routing condition. Where PSAPs do not have the technical capability to receive 10-digit ANI, E911 traffic must be transmitted over a separate trunk group specific to the underlying technology. CLEC will have administrative control for the purpose of issuing ASRs on this trunk group. Where the parties utilize SS7 signaling and the E911 network has the technology available, only one (1) E911 Trunk group shall be established to handle multiple NPAs within the local Exchange Area or LATA. If the E911 network does not have the appropriate technology available, a SS7 trunk group shall be established per NPA in the local Exchange Area or LATA. In addition, 911 traffic originating in one (1) NPA must be transmitted over a separate 911 Trunk group from 911 traffic originating in any other NPA 911.

4.2.5.

CLEC shall maintain facility transport capacity sufficient to route 911 traffic over trunks dedicated to 911 Interconnection between the CLEC switch and the AT&T-22 STATE E911 SR.

911 Attachment, emphasis added.

The 911 Attachment is enclosed for your review. The plain language of the 911 Attachment cited above provides several distinct obligations on Spirit. First, per the contract language, Spirit "...shall maintain facility transport capacity sufficient to route 911 traffic over trunks dedicated to 911 Interconnection..." (Section 4.2.5) Second, per this same contract provision, Spirit shall maintain this obligation between "...[itself] and the **AT&T-22 STATE E911 SR.**" (Section 4.2.5) (Emphasis added.). The language here is clear- Spirit has the obligation to maintain this facility transport between itself and the AT&T E911 SR. Additionally, Section 4.2.4 of the contract provides clear obligations between the parties, and requires Spirit to order a separate E911 Trunk group **from AT&T** for each county, default PSAP or other geographic area that [Spirit] serves if the E911 Customer for such county or geographic area has a specified varying default routing condition. (Section 4.2.4) (Emphasis added.) Per the parties' contract, Spirit cannot now simply void these obligations by employing the services of an alternative 911 service provider. Such action would be a violation of the terms and conditions of the 911 Attachment.

Additionally, it should be emphasized that the referenced contract provisions were agreed to and put in place to ensure, from a safety and reliability perspective, the proper handling of 911 calls. Specifically, at the time of execution of the contract, Spirit requested dedicated 911 trunks from AT&T because it did not have 911 dedicated trunks, which were needed to ensure that emergency calls could be handled more reliably. The contract between the parties (which required dedicated 911 trunks from Spirit's switch to AT&T's selective router) ensured that 911 calls reached the correct public safety answering point.

In sum, it is AT&T's position that from a contract, safety, and network reliability perspective, Spirit has an obligation to maintain dedicated trunks from its switch to AT&T's

Michael D. Baldwin, Esquire
April 24, 2014
Page 3

selective router. Given Spirit's straightforward contractual obligations, we do not believe mediation by the ORS staff is necessary. In any event, to the extent Spirit disagrees with the plain language of the 911 Attachment, which requires Spirit to maintain the 911 trunks at issue, then Spirit should follow the dispute resolution provisions set forth in the parties' ICA. Among other things, the dispute resolution provision requires Spirit to pay or place in escrow disputed amounts owed. A copy of the ICA's dispute resolution provision is enclosed for your review.

I trust that you will advise your client to honor and abide by its contractual obligations regarding 911 trunking and proper dispute resolution.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Culpepper", written in a cursive style.

Robert Culpepper

Enclosure

EXHIBIT MDB-4



February 4th, 2015

AT&T
Contract Management
Attn: Notices Manager
311 S. Akard Street, 9th Floor
Four AT&T Plaza
Dallas, TX 75202-5398

Subject: Request for Arbitration and Continued Notice of Disputed Claims regarding AT&T 911 Trunks

To Whom It May Concern,

I am writing to you to as a follow-up to the mediation session previously conducted by the South Carolina Office of Regulatory Staff (ORS) on November 6th, 2014 between Spirit Communications and AT&T regarding the issues referenced within Exhibit 1 to this notice. At that meeting, the parties agreed to pursue formal arbitration in accordance with the Interconnection Agreement, paragraph 13.7 "Arbitration."

Please consider this notice of Spirit's request to pursue formal arbitration in accordance with paragraph 13.7 of the interconnection agreement between AT&T and Spirit Communications. Please call me with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael D. Baldwin", with a long horizontal line extending to the right.

Michael D. Baldwin

Senior Counsel, Business & Legal Affairs
Spirit Communications
1500 Hampton Street
Columbia, SC 29201
803-726-4053
mike.baldwin@spiritcom.com

EXHIBIT MDB-5



Patrick W. Turner
General Attorney-South Carolina
Legal Department

AT&T South Carolina
1600 Williams Street
Suite 5200
Columbia, SC 29201

T: 803.401-2900
F: 803.254.1731
pt1285@att.com
www.att.com

March 27, 2015

Michael D. Baldwin, Esquire
Senior Counsel, Business & Legal Affairs
Spirit Communications
1500 Hampton Street
Columbia, SC 29201

Dear Michael,

Your attached letter of February 4, 2015 has been directed to me for response.

I have consulted with Cindy Cox and Cheryl Martinez, who participated along with me on behalf of AT&T in the mediation session referenced in your letter. We all recall discussing that at the appropriate time, Spirit could seek to negotiate a successor Interconnection Agreement with AT&T in accordance with 47 U.S.C. §252(a)(1) and, if necessary and appropriate, either party could petition the Public Service Commission of South Carolina to arbitrate open issues pursuant to 47 U.S.C. §252(b). We mentioned, however, that there would be a number of technical, public safety, policy, and legal issues that would need to be addressed in any such arbitration proceeding with regard to the 911 call routing matters we discussed during the mediation session.

Your letter addresses an entirely different form of arbitration pursuant to Section 13.7 of the General Terms and Conditions of the existing Interconnection Agreement between Spirit and AT&T. Section 13.7 expressly addresses “[d]isputes subject to elective arbitration under the provisions of this Agreement . . .,” and Section 13.6.2.1 of the General Terms and Conditions expressly states that such disputes “will be subject to elective arbitration pursuant to Section 13.7 below *if, and only if . . . both Parties agree to arbitration.*” (emphasis added).

The AT&T representatives at the mediation session were not authorized to, and did not, agree to elective arbitration of a dispute arising from the existing Interconnection Agreement pursuant to Section 13.7. Instead, as explained above, we discussed the entirely different, and mandatory, arbitration of a successor Interconnection Agreement under the federal Telecommunications Act of 1996.

Finally, AT&T does not agree to submit the matters that were addressed during the mediation session to elective arbitration pursuant to Section 13.7 of the existing Interconnection Agreement. In light of the serious technical, public safety, policy, and legal issues that arise from those matters, we are convinced that the Public Service Commission of South Carolina is the most appropriate entity to address any such matters.

Sincerely,

Patrick W. Turner

PWT/nml
Attachment
112787

EXHIBIT MDB-6

HERMAN & WHITEAKER, LLC

DONALD L. HERMAN, JR
GREGORY W. WHITEAKER
KENNETH C. JOHNSON[†]
ROBIN E. TUTTLE^{††}
CARRIE L. DEVIER^{†††}
SUSAN C. GOLDHAR ORNSTEIN
SARAH L. J. ACEVES^{††††}

[†]Admitted in DC and VA only

^{††}Admitted in DC, SC and FL only

^{†††}Admitted in SC only

^{††††}Admitted in DC only

TEL 202-600-7272

FAX 202-706-6056

3204 TOWER OAKS BLVD, STE 180
ROCKVILLE, MD 20852

July 15, 2015

Contracts Manager
Attn: Notices Manager
311 S. Akard St., 9th Floor
Four AT&T Plaza
Dallas, TX 75202-5398

To whom it may concern:

I am writing in reference to that certain Interconnection and/or Resale Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996 by and between BellSouth Telecommunications, LLC d/b/a AT&T Georgia, AT&T North Carolina, and AT&T South Carolina by AT&T Services, Inc., its authorized agent (collectively, "AT&T"), and South Carolina Net, LLC ("Spirit"), dated June 11, 2012 (the "Agreement").

Since December of 2013, Michael D. Baldwin, Senior Counsel for Spirit, has been communicating with various representatives of AT&T and the South Carolina Office of Regulatory Staff (the "ORS") regarding a 911 trunking issue under the Agreement. Copies of the following correspondence between Spirit, AT&T, and the ORS on this matter are attached as Exhibit A to this letter: February 12, 2014 letter from Mr. Baldwin to Chris Rozycki at the ORS; April 24, 2014 letter from Robert Culpepper at AT&T to Mr. Baldwin; February 4, 2015 letter from Mr. Baldwin to AT&T; and March 27, 2015 letter from Patrick W. Turner at AT&T to Mr. Baldwin. Representatives of AT&T and Spirit also participated in an ORS-conducted mediation in November 2014, but were unable to resolve the issue at that time.

Through implementation of the informal dispute resolution procedures provided for in Section 13.5 of the Agreement and a request to AT&T for arbitration pursuant to Section 13.6 of the Agreement, Spirit has attempted to resolve the 911 trunking issue on a business level, as well as through mediation. However, Spirit believes that AT&T has not cooperated in good faith in these discussions. Spirit has refrained from pursuing formal resolution of this matter thus far, and by this letter is making one further attempt to resolve the issue on a business level. However, if the parties cannot resolve the 911 trunking problem by July 31, 2015, Spirit is prepared to pursue

any and all remedies available to it pursuant to law, equity, or agency mechanism. Accordingly, Spirit requests that AT&T cooperate immediately to resolve the issue.

I look forward to hearing from you at your earliest convenience. I can be reached at (202) 600-7273 or dee@hermanwhiteaker.com.

Sincerely,



Donald L. Herman, Jr.

cc: Robert Culpepper (by email at rc1191@att.com)
Patrick W. Turner (by email at pt1285@att.com)
Lessie Hammonds (by email at lhammon@regstaff.sc.gov)
Chris Rozycki (by email at crozyck@regstaff.sc.gov)
Michael D. Baldwin (by email at mike.baldwin@spiritcom.com)

* We kindly request that you please forward this letter to the other AT&T attorneys who were involved in the above-referenced mediation. We do not have their contact information to do so ourselves.

EXHIBIT MDB-7



Patrick W. Turner
General Attorney
Legal Department

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South Carolina
675 W. Peachtree St. NW
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T: 404.927-5290
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www.att.com

July 30, 2015

Via Email and U.S. Mail

Donald L. Herman, Jr., Esq.
Herman & Whitaker, LLC
3204 Tower Oaks Blvd.
Suite 180
Rockville, MD 20852

Dear Mr. Herman:

Your enclosed letter of July 15, 2015 has been directed to me for response.

As explained in various communications, including without limitation Robert Culpepper's letter of April 14, 2014 (attached to your letter) and discussions during the November 6, 2014 mediation referenced in Michael Baldwin's letter of February 4, 2015 (also attached to your letter), the interconnection agreement between AT&T¹ and Spirit² requires Spirit to maintain and pay for the 911 facilities that are the subject of the dispute addressed in your letter.

Mr. Culpepper's letter discusses AT&T's position in detail, and AT&T's representatives at the mediation further addressed each matter presented by Spirit's representative respectfully and in detail. Further, my letter of March 27 (also attached to your letter) explains both why Section 13.7 of the interconnection agreement does not compel arbitration of this dispute and why AT&T is convinced that the respective state commissions are the most appropriate entities to address this dispute. While we understand that Spirit has different views, we strongly disagree with your suggestion that "AT&T has not cooperated in good faith in these discussions."

We hope that Spirit will reconsider its position and honor its contractual obligations regarding the 911 facilities that are the subject of this dispute.

Sincerely,

Patrick W. Turner

PWT/mhs
Attachments

¹ BellSouth Telecommunications, LLC d/b/a AT&T Georgia, AT&T North Carolina, and AT&T South Carolina.

² South Carolina Net, LLC

Donald L. Herman, Jr., Esq.

Page 2

July 30, 2015

cc: Lessie Hammonds (by email at lhammon@regstaff.sc.gov)
Chris Rozycki (by email at crozyck@regstaff.sc.gov)
Michael D. Baldwin (by email at mike.baldwin@spiritcom.com)